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| 41418 | 7590 | 09/26/2005 | EXAMINER VALENTI, ANDREA M | |
| LAW OFFICES OF CHRISTOPHER L. MAKAY 1634 MILAM BUILDING 115 EAST TRAVIS STREET SAN ANTONIO, TX 78205-1763 | | | ART UNIT 3643 | PAPER NUMBER |

DATE MAILED: 09/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/772,702

Applicant(s)

HARTSELL, CLIFF

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,8-22 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,8-22 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f):
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 8-15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woodland Fish and Wildlife, Quail on Small Woodlands, published July 1996, <http://www.dfw.state.or.us/public/woodlandarc/quail.pdf> [retrieved from internet 15 February 2005] 8 pages in view of U.S. Patent No. 2,355,008 to Moran and U.S. Patent No. 4,074,682 to Yoon.

Regarding Claim 1, Woodland Fish and Wildlife teaches a protective structure (Woodland page 3 Roosts), where in a fowl uses the protective structure as a sanctuary and as a shelter; a habitat strip (Woodland page 2 Food and Cover) disposed near the protective structure, wherein the fowl uses the habitat strip for nesting; and a station comprising a water supply (Woodland page 3, first column, second paragraph), wherein the fowl establish a territory around the water supply, and utilize the protective structure and habitat strip such that they do not migrate to another location; and a roof assembly (Woodland page 3 Roost Fig. Horizontal planar member); a plurality of uprights that suspend the roof assembly above the ground (Woodland page 3 Roost Fig. Vertical members); a horizontal support secured between the adjacent uprights, wherein the horizontal supports stabilizes the adjacent uprights (Woodland page 3 Roost Fig. Top of

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page perspective view, horizontal members attached between the vertical members); a cap support secured to the horizontal supports (Woodland page 3 perspective Fig., the perpendicular middle members that connect to the horizontal members); a cover over the cap support (Woodland page 3, third column, second complete sentence).

Woodland Fish and Wildlife is silent on a radial support secured between the ground and either an upright or a horizontal support, wherein the radial supports stabilize the uprights and the horizontal supports. However, Moran teaches that it is old and notoriously well-known to provide radial supports secured between the ground and the uprights of a structure (Moran Fig. 2 #54 and 38). It would have been obvious to one of ordinary skill in the art to modify the teachings of Woodland with the teachings of Moran at the time of the invention for the advantage of making the structure more secure and to prevent it from blowing over in high winds and for the camouflaging advantages (it is notoriously well-known to anchor structures with radial members for support e.g. tents).

Woodland as modified is silent on a circumferential support secured between all but one of adjacent radial supports, whereby the adjacent radial supports without a circumferential support secured thereto provide access to the protective structure. However, Yoon teaches circumferential supports secured between all but one of the adjacent radial supports thereby providing access (Yoon Fig. 2 #26). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Woodland at the time of the invention with the teachings of Yoon for providing additional support to secure the camouflaging effect and to provide more stability to the structure.

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Regarding Claim 2, Woodland Fish and Wildlife as modified teach the food items from the habitat strip are the primary source of food for the fowl (Woodland page 2 Food and Cover).

Regarding Claim 3, Woodland Fish and Wildlife as modified teach the fowl also utilize the habitat strip for cover (Woodland page 2 Food and Cover).

Regarding Claim 4, Woodland Fish and Wildlife as modified is silent on the protective structure comprises a skirt placed between the ground and at least one side of the roof assembly. However, it is old and notoriously well-known that Quail prefer shrub roosting sites. It would have been obvious to one of ordinary skill in the art to modify the teachings of Woodland at the time of the invention with a skirt for the advantage of providing more coverage for the Quail and simulating more of a shrub like structure similar to their preferred natural habitat, and for protection from predators.

Regarding Claim 8, Woodland Fish and Wildlife as modified teach the cover is a natural vegetative cover (Woodland page 3, third column, first paragraph).

Regarding Claim 9, Woodland Fish and Wildlife as modified teach the cover is of a man-made material (Woodland Roost Figs. page 3).

Regarding Claim 10, Woodland Fish and Wildlife as modified teach the habitat strip is a plowed and planted portion of earth (Woodland page 4, first column, Food section, first paragraph).

Regarding Claim 11, Woodland Fish and Wildlife as modified teach the habitat strip is planted with native grasses (Woodland page 4, first column, Food section, first paragraph).

Regarding Claim 12, Woodland Fish and Wildlife as modified inherently teach the native grasses produce seeds at varying times of the year such that there is always a supply of food for the fowl (Woodland page 4, first column, Food section and page 2, section Food and Cover, first paragraph).

Regarding Claim 13, Woodland Fish and Wildlife as modified teach a water supply and the station includes a barrier assembly to keep large animals away from the water supply (Woodland page 3, first column, line 6).

Regarding Claim 17, Woodland Fish and Wildlife as modified teach the water supply is housed within the barrier assembly (Woodland page 3, first column, line 6).

Regarding Claim 14, Woodland Fish and Wildlife as modified is silent on a door panel utilized by an operator during setup and maintenance. However, it is old and notoriously well-known to provide doors, portals, hatches, etc for ergonomic ease of access to an enclosed area for routine maintenance or for refilling the supply if necessary or for adding supplemental nutrients to the supply. This limitation does not present a patentably distinct limitation.

Regarding Claim 15, Woodland Fish and Wildlife as modified inherently teaches the barrier assembly permits entry of fowl there through and restricts entry of larger animals (Woodland page 3, first column).

Claims 16 and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woodland Fish and Wildlife, Quail on Small Woodlands, published July 1996, <http://www.dfw.state.or.us/public/woodlandarc/quail.pdf> [retrieved from internet

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15February 2005] 8 pages in view of U.S. Patent No. 2,355,008 to Moran and U.S.

Patent No. 4,074,682 to Yoon as applied to claim 1 above and further in view of U.S.

Patent No. 4,982,702 to Copps.

Regarding Claim 16, Woodland Fish and Wildlife as modified is silent on the barrier assembly further comprises a roof panel to protect components located within the barrier assembly. However, Copps teaches a barrier that has a roof and sides that only permits access to the fowl (Copps Fig. 1 and abstract). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Woodland with the teachings of Copps since the modification is merely complete enclosure of the water supply, the enclosure performing the same intended function of permitting access just to the fowl and modified merely for the advantage of enhanced protection of the fowl and also protection to the water supply from vandalism.

Regarding Claim 18, Woodland Fish and Wildlife as modified teach the water supply is housed beneath the roof panel for protection from the elements (Copps Fig. 1).

Regarding Claim 19, Woodland Fish and Wildlife as modified teaches the water supply comprises: a trough (Copps #24); a storage tank containing a water (Copps #20); and a float valve (Copps #30) disposed on the trough and in fluid communication with the storage tank, wherein water disposed in the storage tank flows through the float valve to the trough when the water level in the trough is below the desired level, and further wherein the water does not flow through the float valve when the water level in

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the trough is at or above the desired level, thereby continuously maintaining the water level in the trough.

Regarding Claim 20, Woodland Fish and Wildlife as modified teaches a stand (Copps #18) to support the storage tank and keep the tank elevated above the trough.

Regarding Claim 21, Woodland Fish and Wildlife as modified teaches the trough further comprises a ramp (Woodland page 3, first column, second paragraph) disposed in the trough, wherein the fowl that fall into the water exit the water by walking up the ramp.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woodland Fish and Wildlife, Quail on Small Woodlands, published July 1996, <http://www.dfw.state.or.us/public/woodlandarc/quail.pdf> [retrieved from internet 15February 2005] 8 pages in view of U.S. Patent No. 2,355,008 to Moran and U.S. Patent No. 4,074,682 to Yoon as applied to claim 1 above and further in view of U.S. 5,924,380 to Rayborn.

Regarding Claim 25, Woodland Fish and Wildlife as modified teaches the importance of providing feed with planting of particular plants near to the cover, but is silent on a feeding device. However, Rayborn teaches a feed device located near to the cover (Rayborn Col. 2 line 58-60). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Woodland with the teachings of Rayborn at the time of the invention for the advantage of providing necessary vitamins and nutrients to the quail to maintain good health.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woodland Fish and Wildlife, Quail on Small Woodlands, published July 1996, <http://www.dfw.state.or.us/public/woodlandarc/quail.pdf> [retrieved from internet 15February 2005] 8 pages in view of U.S. Patent No. 2,355,008 to Moran and U.S. Patent No. 4,074,682 to Yoon as applied to claim 1, 19, and 20 above, and further in view of U.S. Patent No. 2,618,237 to McDermott et al.

Regarding Claim 22, Woodland Fish and Wildlife as modified is silent on the trough assembly is cantilevered off the front end of the stand assembly such that insects cannot climb to the water in the trough. However, McDermott teaches a cantilevered fowl water trough (McDermott Fig. 5). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Woodland with the teachings of McDermott at the time of the invention since the modification is merely the shifting location of a known element performing the same intended function, modified for the advantage of making the device easily portable to one area of the habitat to another.

Response to Arguments

Applicant's arguments with respect to claims 1-4, 8-22, and 25 have been considered but are moot in view of the new ground(s) of rejection.

Examiner maintains that Woodlands teaches the primary features of the Quail habitat system and that any structural changes to the size and shape of the roost would be obvious to one of ordinary skill in the art [In re Rose, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955)] and [(Kosciuk, James R. and Peloquin, E. Paul. 1986, "Elevated

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Quail Roosts: Section 5.1.5, US Army Corps of Engineers Wildlife Resources Management Manual," Technical Report EL-86-18, July 1986, 19 pages total including title pages and abstract); Kosciuk teaches artificial cover can be provided by constructing elevated brush piles (Kosciuk page 3, second paragraph, line 5-6) and that **any system of frame and supports that will hold brush above the ground at a desired elevation for a given period of time can serve as an artificial roost** (Kosciuk page 4, first paragraph of the Design, Construction, and Installation section).]

It is notoriously well-known that Quail prefer to roost in shrubs and known artificial means of creating roosting sites involves creating brush piles. Thus any modification to modify a man-made structure to further resemble a natural shrub pile would have been obvious to one of ordinary skill in the art for the advantage of appealing to more Quail and for providing a more complete coverage and thus a safer roosting site.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

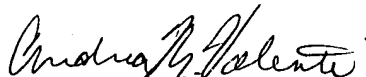
U.S. Patent Pub No. US 2002/0069904; U.S. Patent No. 2,349,993; U.S. Patent No. 2,302,650; U.S. Patent No. 684,086; U.S. Patent No. 2,879,553; U.S. Patent No. 5,285,804.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Andrea M. Valenti
Patent Examiner
Art Unit 3643

19 September 2005